

April 30, 1999

Prospective Offerors,

The Internal Revenue Service (IRS) is continuing its approach to an Electronic Tax Administration (ETA) partnership with industry that began on November 26, 1997, with the release of IRS' first Request for Agreements (RFA). The first and subsequent RFAs resulted in several agreements for tax filing seasons 1998 and 1999. As a result, the IRS is again offering partnerships for the year 2000 filing season. This RFA deals with Non-Monetary Agreements for the 2000 filing season to allow Electronic Return Transmitters (ERTs) to provide an electronic postmark to taxpayers.

The IRS will respond to questions received through seven days from the date of release of the RFA. Questions should be directed to Mr. Jeffrey Petrino via electronic mail at "jeffrey.petrino@ccmail.irs.gov." Mr. Petrino can also be reached via telephone at (202) 283-1411. The IRS must receive proposals for the 2000 filing season as set forth in section 3.0 of the RFA. The IRS anticipates issuing agreements for transmitters to provide an electronic postmark to taxpayers for the 2000 filing season prior to October 1, 1999.

Thank you for your interest and we look forward to receiving your proposals under this Request for Agreements for Electronic Tax Administration Partnership.

Sincerely,

Carol Stender-Larkin  
Acting National Director,  
Electronic Program Operations  
ID#08-2003

Attachment

**REQUEST FOR AGREEMENT  
(RFA)  
for the  
ELECTRONIC TAX ADMINISTRATION  
(ETA)  
PARTNERSHIP**

Solicitation #: TIRNO-99-H-00002, Project 5  
Title: Use of Electronic Postmark by  
Authorized Electronic Return Transmitters  
Issued: April 30, 1999  
Proposals Due: See Section 3.0, Delivery of Proposal/Project Plan  
Questions: E-mail [jeffrey.petrino@ccmail.irs.gov](mailto:jeffrey.petrino@ccmail.irs.gov),  
or call (202) 283-1411

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### Attachments

Attachment 1   Software Developers Conference Presentation

Attachment 2   Model Electronic Tax Administration Memorandum of Agreement  
                    Between the Internal Revenue Service and [insert participant's  
                    name]

## **1.0 INTRODUCTION**

The Internal Revenue Service (IRS) is continuing its approach to an Electronic Tax Administration (ETA) partnership with industry that began on November 26, 1997 with the release of IRS's first Request for Agreements (RFA).<sup>1</sup> The first and subsequent RFAs resulted in several agreements for tax filing seasons 1998 and 1999. As a result, the IRS is refining the process and its expectations based on lessons learned, and is again offering partnerships for the year 2000 filing season.

This is a solicitation of proposals for Non-Monetary Agreements only. No proposal for funding will be considered. In general, "Agreements" are defined as non-monetary arrangements between two parties (commercial firm, not-for-profit organization, or any federal, state or local agency and the IRS). However, for this RFA, the IRS will enter into agreements only with Electronic Return Transmitters (ERTs) who meet certain mandatory eligibility requirements (See Section 1.3 below).

### **1.1 Background**

The IRS is the largest processor of information in the world, processing in excess of 2 billion transactions in 1998. These transactions include receiving and processing tax related data, including individual and business income tax returns, informational returns (interest, dividend, etc.), and payments. While some of the transactions are electronic, the IRS still devotes significant resources to convert much of the information provided by its information exchange partners into an electronically processable format. There were 24.6 million individual income tax returns filed electronically in 1998. A total of 29.6 million electronically filed individual returns are projected for 1999.

ETA represents the two-way electronic exchange of information that the IRS has with individual and business taxpayers, taxpayer representatives, tax practitioners, financial institutions and other government entities. It provides the mechanisms for taxpayers, preparers and practitioners, payers and other information exchange partners to file returns, make payments, exchange correspondence, and retrieve forms, publications, and other information from the IRS with a minimum reliance on paper.

The mission of ETA is to revolutionize how taxpayers transact and communicate with the IRS. Strategies to fulfill this mission include:

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<sup>1</sup> Because participation in agreements will not entail the expenditure of appropriated funds, the agreements do not meet the definition of "acquisition" in Federal Acquisition Regulation (FAR) 2.101. Therefore, the FAR does not apply to this RFA or the resulting agreements.

- Making electronic filing, payment, and communication so simple, inexpensive, and trusted that taxpayers will prefer these to calling and mailing;
- Providing additional taxpayer access methods to electronic filing, payment, communication products and services;
- Aggressively protecting transaction integrity and quality;
- Substantially reducing electronic filing per return processing costs;
- Seeking the best people, ideas and partners to assure our success; and,
- Delivering the highest quality products and services as promised.

IRS faces the challenge of eliminating barriers to electronic filing. Generally taxpayers have not been able to file electronically on the last few days preceding prescribed due dates, including extensions for filing, and know that the return will be received by the IRS by the prescribed due date or extension date. This barrier results from the fact that transmitters of electronic returns are allowed three days after receipt to transmit the returns to IRS. Providing an electronic postmark to filers of electronic returns will provide them the same confidence that their returns will be treated as timely filed as they have by filing a paper return with a postal service postmark. The reduction or elimination of this barrier will allow for progress towards: 1) IRS' goal to electronically transact 80% of IRS business by the year 2007; and, 2) the interim goal that, to the extent practical, all returns prepared electronically should be filed electronically by the year 2002.

The Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, section 2003 (b) amended the Internal Revenue Code (IRC) section 7502 (c) (2) to authorize the Secretary to provide the extent to which the prima facie evidence of delivery and postmark date rules apply to electronic filing. Proposed and temporary regulations<sup>2</sup> have been published and provide the extent to which the postmark date rules apply to electronic filing. The regulations did not extend the prima facie evidence of delivery rules to electronic. However, in the regulations, IRS and the Department of the Treasury requested comments regarding whether the prima facie evidence of delivery rule should be extended to electronic filing.

The regulations permit "the date of an electronic postmark given by an authorized electronic return transmitter to be deemed the filing date if the date of the electronic postmark is on or before the date prescribed for filing." The regulations allow "the Commissioner to enter into an agreement with an

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<sup>2</sup> (T.D. 8807; REG-115433-98 Published in the Federal Register: January 15, 1999, 64 FED. REG. 2568 and 64 Fed. Reg. 2606. The Federal Register is available on-line via GPO Access [access.gpo.gov]. The regulations are also available on the IRS Internet website at: [http://www.irs.ustreas.gov/tax\\_regs/regslst.html](http://www.irs.ustreas.gov/tax_regs/regslst.html) )

electronic return transmitter, or to prescribe in forms, instructions, or other appropriate guidance the procedures under which the electronic return transmitter is authorized to provide the date and time that the electronic return transmitter received the electronically filed document.”

For tax year 1998, an ERT was authorized to provide an electronic postmark as a pilot. This agreement was entered into in response to proposals received in reply to the Electronic Tax Administration’s Request for Agreement (RFA) dated November 26, 1997. The agreement allows the industry partner to provide a date and time stamp to taxpayers using specific on-line software products.

## **1.2 Scope of Request for Agreement (RFA)**

For tax year 1999, the electronic postmark will apply to any electronically filed income tax return transmitted to an ERT that is authorized, pursuant to an agreement entered into with the IRS to provide an electronic postmark.

For the purposes of this RFA, the Government will focus on the following programs: 1) IRS e-file using a tax professional; and, 2) IRS e-file using a personal computer. The focus will be limited to the electronic filing of individual income tax returns (1040 series). Additional ETA programs (e.g., business and information returns) will be addressed in the future.

Offerors are invited to propose a plan to conduct a pilot to provide electronic postmarks through software after receipt of transmission of returns on its host system. Transmitters should experience an increase in volume of business from the offering of an electronic postmark.

## **1.3 Mandatory Eligibility Requirements**

In order to be eligible for an Agreement for the 2000 filing season, an Offeror responding to this RFA must:

- Be an authorized IRS *e-file* transmitter, as defined in as defined in [Insert Revenue Procedure 98-50 Requirements of Participants in the IRS e-file Program for Form 1040, U.S. Individual Income Tax Return and Revenue Procedure 98-51 Requirements for Participants in the Form 1040 On-line Filing Program, whichever is applicable], or in procedures subsequently prescribed by the Commissioner, and have participated in the 1998 and 1999 filing seasons;
- Have electronically transmitted at least 100 federal individual income tax returns during the 1999 filing season; and
- Not have an unresolved IRS *e-file* suspension letter.

IRS will verify through its records that the Offeror meets the mandatory eligibility requirements.

## **2.0 AGREEMENT REQUIREMENTS**

The IRS anticipates entering into agreements for the 2000 processing year (1999 tax year) with an option to extend for the 2001 processing year (2000 tax year). In the event that all authorized IRS *e-file* transmitters are allowed to offer an electronic postmark for the 2001 processing year, the option would not be exercised.

Separate proposals should be submitted for use of the electronic postmark for returns filed through each applicable IRS e-file program: 1) IRS *e-file* using a personal computer (a.k.a. "on-line" filing); and, 2) IRS *e-file* using a Tax Professional. However, offerors are not required to propose for both programs.

### **2.1 Project Plan**

All proposals submitted in response to this RFA shall be submitted in the form of a project plan. The format for the project plan is as follows:

#### **A) Introduction**

- Briefly describe your understanding of the objective and scope of the proposed Agreement.
- State the filing season proposed (2000 with an option to extend for 2001 ).
- Address the RFA's Mandatory Eligibility Requirements (See Section 1.3).
- Identify the IRS Service Center(s) to which you currently transmit returns, and provide information regarding any anticipated changes.
- Provide your Electronic Filer Identification Number (EFIN), and Electronic Transmitter Identification Numbers (ETINs) used for 1998 and 1999 filing seasons. Categorize the ETINs by service center for each year.
- Include point of contact (POC) information (name, address, phone number, e-mail address and fax number) for discussion and negotiation of your proposal. The point of contact shall have decision making (commitment) authority for the Offeror.
- Clearly state the implementation milestones and associated time frames for the proposed pilot and pre-pilot testing. If the IRS determines that the proposal cannot be accomplished in time for the 2000 processing year, the proposal will fail this step.

#### **B) Description of Proposed Agreement**

- Include POC information (if different than above) for management of your performance of the agreement.
- Describe the POC's scope of authority and the resources available to the POC for ensuring the performance of the Agreement.
- Describe the duties and responsibilities of the Offeror as an Industry partner to the IRS in fulfilling the proposed agreement.
- Describe the duties and responsibilities of the IRS in fulfilling the proposed Agreement.
- Describe the attention that will be given to this project, the resources that you will allocate, and your plan for managing and implementing the Agreement.
- Describe how the availability of an electronic postmark will be communicated to your customers or taxpayers filing returns through an ERO. The IRS will provide standard language for this communication.
- Describe how the electronic postmark will be provided to taxpayers. The IRS will provide standard language for the transmitter to provide the electronic postmark to the taxpayer explaining the electronic postmark and how the IRS will treat it for purposes of timely filing.
- Describe the measures to be taken to secure the integrity of the postmark from tampering by taxpayers filing on-line or by EROs.
- Return the Model ETA Agreement (Attachment 2 to this RFA) with any proposed additional content for negotiation, including dispute resolution and any remedies other than termination for the failure of either party to perform. Offerors are free to describe the respective duties and responsibilities either in the Agreement Requirements section of the project plan or in items 7 and 8 of the Model ETA Agreement.

## **2.2 Deliverables**

The Industry Partner shall submit Monthly Status Reports and Pilot Finding Reports to the IRS. The Monthly Status Reports shall describe any problems encountered and shall be submitted by the tenth day of the following month. The Pilot Finding Report shall describe the operation of the pilot and contain findings, including any problems, changes made during the pilot, lessons learned, recommendations for improvement, client feedback, and recommendations for extended pilot options or IRS system changes. An initial Pilot Finding Report shall be submitted by June 1, 2000, based on data received through May 1, 2000. An updated report shall be submitted by December 1, 2000, based on data received through October 21, 2000. The reports shall be e-mailed to the



IRS Point of Contact to be identified in the Agreement. This report is subject to inspection, verification, and approval by the IRS, and will be used to determine whether any option to extend the Agreement is exercised, if applicable.

### **3.0 DELIVERY OF PROPOSAL PROJECT PLAN**

Offerors shall submit proposals via electronic mail to Mr. Jeffrey Petrino, Contracting Officer at "jeffrey.petrino@ccmail.irs.gov." Offerors shall submit proposals in Microsoft Word 97 or lower version or WordPerfect 6.1 or lower version. We do not anticipate the need for proposals to be very large in size, so file compression is not necessarily required. Any Offeror who intends to compress the file must use WinZip 6.2 or less. Proposals for the 2000 filing season shall be completely transmitted through electronic mail by 5:00 p.m. EDT June 3, 1999. Extraneous narratives, elaborate brochures, uninformative Public Relations (PR) material and so forth will not be considered. Proposals must be sent by electronic mail. Any proposal that is delivered solely by other media will not be considered. Please note that our communication system delivers E-mail of up to 2MB in size between 6:00 a.m. and 6:00 p.m. Anything larger than 2MB up to 9MB (maximum size accepted) is delivered after 6:00 p.m. and before 6:00 a.m.

### **4.0 EVALUTION PROCESS AND ASSESSMENT CRITERIA**

The Offerors' proposals will be evaluated using the three-step process and the factors described below.

#### Step 1

The first step of the evaluation entails an assessment of the Project Plan to determine: (1) the Offeror's adherence to the scope of the RFA (see 1.2 above); (2) the Offeror's compliance with the mandatory eligibility requirements (see 1.3 above); and (3) realism of the Offeror's proposal for accomplishment in time for the 2000 processing year. The IRS will make this determination on a pass/fail basis. Proposals within the scope of the RFA that comply with the mandatory requirements and propose Agreements that are achievable in time for the 2000 filing season will pass and move to the next step.

#### Step 2

In the second step, the IRS will review the Project Plan and communicate to the Offeror uncertainties that are found in the proposal. Such communications will be for the purpose of minimizing the uncertainties. They will not be used to cure significant omissions in the proposal, materially alter the proposal, or otherwise elicit significant revisions to the proposal. Any proposals whose project plans contain significant omissions or ambiguities will no longer be considered. The project plans that are clear will be evaluated for the following:

- Does the Offeror promise appropriate management attention and resources?
- Are rights, responsibilities, and liabilities clearly stated for both the Offeror and the IRS?
- Does the Offeror clearly articulate how it intends to communicate the availability of the electronic postmark to its customers?
- Does the Offeror propose measures that ensure timely delivery of an electronic postmark to taxpayers.
- Does the Offeror propose measures that adequately secure the integrity of the electronic postmark from tampering by taxpayers filing on line and by EROs?
- Does the Offeror propose terms and conditions that are acceptable to the IRS? (Recommended terms and conditions are provided in Attachment 2).

Concurrently, the offeror's project plan will be reviewed by IRS Criminal Investigation. This review will address fraud prevention and detection implications of the proposal.

Any uncertainties in the Offeror's proposal identified by the IRS will be communicated to the Offeror for clarification and possible negotiation. This evaluation will result in a pass/fail determination. Offerors' proposed agreements that pass the Step 2 evaluation and the internal IRS reviews will continue to the next step.

### Step 3

The third step will focus on the proposed agreements' impact on benefit and burden to the Service. The IRS will measure benefit by past volume and burden by performance quality. The IRS will score each proposal using a point system. Each of these two factors will be of equal weight. The IRS will obtain the data for scoring of both factors from its records for the 1998 and 1999 processing years. The proposals will be ranked in descending order, beginning with the highest score, for each IRS e-file program: 1) IRS *e-file* using a personal computer; and, 2) IRS *e-file* using a tax professional.

The intent is to award an equal number of agreements for each program: 1) IRS *e-file* using a personal computer; and, 2) IRS *e-file* using a tax professional. The maximum number of Agreements that can be awarded will be limited to the number that will involve a total of no more than 20 ETINs per service center. This limitation is due to the IRS programming capacity. As a result of this assessment, any, all, or none of the proposed agreements may be selected.

If IRS is unable to complete all aspects of testing prior to entering into an Agreement, and subsequent testing reveals that any of the mandatory requirements are not met, the Agreement will be immediately terminated.

Issuance by the IRS of either a warning letter for deviation from the applicable Revenue Procedure or procedures subsequently prescribed by the Commissioner, or a suspension letter to the Offeror or Participant, may result in a decision by the IRS to not enter into an agreement or to terminate an agreement for participation in this pilot.

## **Attachment 1**

### **Electronic Postmark Presentation Software Developers Conference, March 22, 1999**

“Electronic Postmark” may ultimately be referred to as “date and time stamp” or another designated title if the United States Postal Service (USPS) is successful in its effort to obtain a registered service mark for “electronic postmark.”

Taxpayers have confidence in the USPS postmark for paper returns, the IRS wants taxpayers to have same confidence in filing electronic returns on dates near filing/extension deadlines.

**IRC 7502** provides that a return will be deemed filed on the date of the United States postmark stamped on the cover in which the return is mailed, provided the date of the postmark is on or before the last day for filing the return.

**The Internal Revenue Service Reform and Restructuring Act 1998 (RRA 98)** amended IRC 7502 to authorize the Secretary to provide the extent to which the prima facie evidence of delivery and postmark rules apply to electronic filing.

**Regulations published January 15, 1999** provide for the extent to which the postmark rule applies to electronic filing. It allows the Commissioner to enter into an agreement with transmitters, or to prescribe in forms, instructions, or other appropriate guidance the procedures for transmitters to provide electronic postmarks to taxpayers to acknowledge the date and time of receipt of an electronically filed document.

Electronic Postmark is defined as the date and time the electronic return is first received on the Authorized transmitter’s host, in the taxpayer’s time zone.

NOTE: If the return is rejected, it must be retransmitted within the usual timeframes as provided in Publication 1345A for the postmark to be valid.

**Agreement for Tax Year 1998** between the IRS and an industry partner (Intuit, Inc.) for a pilot to provide an Electronic Postmark to filers of on-line income tax returns as result of proposal made in response to a prior Request For Agreements (RFA).

**RFA for Tax Year 1999** will be issued to request proposals for agreements with transmitters of on-line and transmitters of Electronic Return Originator (ERO) prepared returns.

**Publication 1346** will include changes to record layouts as follows:

A field description for “For Authorized Electronic Postmark Transmitters Only”

**Three new summary fields**

1. Electronic Postmark **Date**

- 8 position date field YYYYMMDD format
- If format is invalid, return will reject

2. Electronic Postmark **Time**

- 4 positions HHMM format
- Valid range for HH 00 through 23
- Valid range for MM 00 through 59
- If invalid, return will reject

3. Electronic Postmark **Time Zone**

- 1 position alphanumeric field with values
  - E Eastern time zone
  - C Central time zone
  - M Mountain time zone
  - P Pacific time zone
  - A Alaskan time zone
  - H Hawaiian time zone
- If invalid, return will reject

NOTE: All three fields must be present, or return will reject with new reject code.

The IRS would like to receive proposals from transmitters to offer the electronic postmark to taxpayers filing on-line and to taxpayers filing through EROs.

## **Attachment 2**

MODEL

**ELECTRONIC TAX ADMINISTRATION  
MEMORANDUM OF AGREEMENT  
BETWEEN THE INTERNAL REVENUE SERVICE  
[Insert name of Offeror company or organization]**

### **1. INTRODUCTION:**

This Electronic Tax Administration ("ETA") Memorandum of Agreement ("Agreement") between the Internal Revenue Service ("IRS") and [insert name of Offeror company or organization] ("Participant") sets forth the complete agreement of the parties with regard to participation as "Industry Partners" of the IRS with respect to a pilot for providing taxpayers with an electronic postmark for their electronically filed Federal Individual Income Tax Return. The pilot will take place during the 2000 processing year which covers the 1999 tax year. [Insert name of Offeror company or organization] will be referred to as "Participant" for the remainder of this document.

### **2. AUTHORITY:**

This Agreement is entered into pursuant to the authority vested in the Commissioner of the IRS by Treasury Order 150-10 to administer and enforce the internal revenue laws and revenue procedures for electronic filing.

This Agreement is not an "acquisition" as that term is defined in the Federal Acquisition Regulation ("FAR") 2.101; therefore, the FAR does not apply to this Agreement.

### **3. BACKGROUND AND PURPOSE:**

This Agreement results from a proposal submitted by the Participant in response to a Request for Agreement ("RFA") for ETA Partnerships dated April 30, 1999 (Solicitation TIRNO-99-H-00002, Project 5). Proposals were sought for non-monetary Agreements described as Providing Electronic Postmarks for Individual Income Tax Returns.

The purpose of this Agreement is to engage in a pilot allowing certain electronic return transmitters to provide an electronic postmark to taxpayers filing tax year 1999 Form 1040 returns. This may contribute to reducing or removing barriers to the use of electronic filing.

#### **4. DEFINITIONS:**

- a) **Electronic Postmark.** For purposes of this Agreement, the phrase, electronic postmark, shall mean (i) the name(s) and social security number(s) associated with the return filed; (ii) the tax year and type of return, (iii) the date on which the Participant first received the return on its host computer system for transmission to the IRS and (iv) the time of the day that the Participant first received the return on its host system. The electronic postmark may in the future be referred to as “date and time stamp”, “IRS e-file postmark” or any other name designated by the IRS. The participant must use its name in conjunction with the term “electronic postmark” in all notices to the taxpayer, electronic postmark acknowledgements, product packaging, advertisements, articles, press releases, or other presentations.
- b) **Transmitter.** For purposes of this Agreement, the term Transmitter shall have the same meaning as in section 3.02 of Revenue Procedure [Insert either 98-50 or 98-51], or in procedures subsequently prescribed by the Commissioner.
- c) **Participant.** For purposes of this Agreement, the term Participant shall mean [Insert name of Offeror company or organization] and any successor, assignee or designee of [Insert name of Offeror company or organization] approved by the IRS.
- a) **2000 Processing Year.** For purposes of this Agreement, the term 2000 processing year shall mean the period (including extensions) of time in which tax year 1999 income tax returns can be electronically filed. This period of time shall be the same as provided in section 2.04 of Revenue Procedure [Insert either 98-50 or 98-51, whichever is applicable], or in procedures subsequently prescribed by the Commissioner.
- e) **Pilot.** For purposes of this Agreement, this pilot is a program covered by [Insert either Section 18 of Revenue Procedure 98-51 or section 15 of Revenue Procedure 98-50, whichever is applicable], or in procedures subsequently prescribed by the Commissioner.

#### **5. APPLICABLE DOCUMENTS: N/A**

#### **6. AUTHORIZED REPRESENTATIVES:**

Internal Revenue Service  
Grace E. Davis at OP:ETA:O:C  
5000 Ellin Road  
Lanham, MD 20706  
Telephone: 202-283-0595  
Fax: 202-283-7434, email: [grace.e.davis@m1.irs.gov](mailto:grace.e.davis@m1.irs.gov)

[Insert name of Offeror company or organization]:

[Insert name of POC]

[Insert Address for POC]

Telephone: [Insert telephone number for POC]

Fax: [Insert fax number for POC], e-mail: [Insert e-mail address for POC]

## **7. RIGHTS AND RESPONSIBILITIES OF THE IRS:**

The IRS agrees for the 2000 processing year to:

- a) Provide standard language to the participant to be used for communicating the availability of the electronic postmark and for the participant to provide the postmark to the taxpayer explaining the electronic postmark and how the IRS will treat it for purposes of timely filing.
- b) Review, in a timely manner, all information to be provided to the public by the Participant referencing the pilot initiative including, but not limited to, product packaging, advertisements, articles, press releases, or other presentations. The IRS may wave it's right to review the Participant's products mentioned above. For each review required by the IRS and submitted by Participant, Participant will supply desired timeframe for review.
- c) Make any requests to Participant for verification of an electronic postmark in writing.

In addition, the IRS and Participant will work together to develop and mutually agree upon the wording of any information described in items (a). If agreement cannot be reached between the Participant and the IRS, the language being reviewed shall not be used. See also Part 9 of this Agreement.

## **8. RIGHTS AND RESPONSIBILITIES OF THE PARTICIPANT:**

The Participant agrees for the 2000 processing year, at no cost to the IRS, to:

- a) [Insert "Modify" or "Use modified" (Insert names of software products)] to include the ability to provide taxpayers with an electronic postmark for receipt of electronic Form 1040 returns by the Participant's host system and to provide the electronic postmark data to the IRS.
- b) Use standard language, as developed by the IRS, to communicate the availability of the electronic postmark and to provide the electronic postmark to the taxpayer explaining the electronic postmark and how the IRS will treat it for purposes of timely filing.



- c) Provide the IRS with two weeks to complete reviews, including the information referenced in section 9 of this Agreement, unless the IRS waives this requirement.
- d) Make available to the taxpayer through the [Insert Participant's Software or ERO, whichever is applicable] the electronic postmark information and the agreed upon language within 24 hours of Participant receiving the taxpayer's transmission on its host system. The electronic postmark information provided to the taxpayer will instruct taxpayers to extrapolate the time from their electronic postmark to the time zone for where they live, if they live in a time zone other than that of the Participant. The Participant will communicate to the taxpayer their responsibility to e-file their return before midnight, of the taxpayer's time zone, on the relevant filing deadline.
- e) Record the date and time that an electronic return is first received by the Participant on its host system with enough information to associate the electronic postmark with the appropriate return. If the return is rejected the Participant will retain this record with the original receipt information, the reason for rejection, and the date of subsequent transmission if a corrected return is resubmitted. Participant must keep these records for thirty-six (36) months.
- f) Be responsible for the safe storage and retrieval of all electronic postmark information for thirty-six (36) months from the transaction date. This paragraph shall survive the termination of this Agreement.
- g) Supply to the IRS, upon written request, verification of the electronic postmark information.
  - (i) For requests during the 2000 processing year, the Participant will provide the requested information within forty-eight (48) hours of a written request.
  - (ii) For requests made after the 2000 processing year for tax year 1998 returns, the Participant will provide the requested information within seven (7) days of a written request.

This paragraph shall survive the termination of this Agreement.

- h) Comply with all requirements of Transmitters as set forth in Revenue Procedures [Insert 98-50 or 98-51, whichever is applicable], or in procedures subsequently prescribed by the Commissioner the duration of the pilot.
- i) Provide a telephone number prior to January 1, 2000, that [Insert taxpayers or EROs, whichever is applicable] may use to contact the Participant to obtain information concerning the taxpayer's electronic postmark.

- j) Report any material system outage or downtime to the designated IRS Authorized Representative. A material system outage is an outage of 24 hours or greater.
- k) Provide to the designated IRS Authorized Representative a monthly status report by the tenth of the following month detailing any problems encountered.
- l) Provide to the designated IRS Authorized Representative a Pilot Finding Report by June 1, 2000, based on data received through May 1, 2000, describing the operation of the pilot and containing findings, including any problems, changes made during the pilot, lessons learned, recommendations for improvement, client feedback, and recommendations for extended pilot options or IRS system/procedural changes. By December 1, 2000, update the Pilot Finding Report with any relevant information based on data received through October 21, 2000.
- m) Provide prompt written notification to the IRS Authorized Representative if the Participant plans to dissolve or otherwise cease to do business as a Transmitter, or in fact dissolves or otherwise ceases to do business without warning. Should the Participant cease to do business as a Transmitter, the Participant agrees to offer the IRS the option to take custody of the electronic postmark information for tax year 1999 tax returns in a mutually agreed upon format before it is destroyed.
- n) Establish security procedures to prevent (i) unauthorized access to the electronic postmark information and (ii) alteration and manipulation of the electronic postmark information.
- o) The Participant agrees to comply with all relevant statutory, regulatory and administrative requirements relating to the electronic filing program.
- p) For purposes of Revenue Procedure [Insert 98-50 or 98-51, whichever is applicable], or in procedures subsequently prescribed by the Commissioner, returns will be treated as timely filed if received by Participant by midnight on April 17, 2000 (in the time zone of the taxpayer) and transmitted to the IRS within forty-eight (48) hours. For taxpayers that filed an extension, insert August 15, 2000, or October 16, 2000, whichever is applicable, in place of April 17, 2000, in the preceding sentence.

## **9. PUBLIC RELEASE OF INFORMATION**

- a) The Participant shall obtain the written permission of the IRS before releasing to the public any written information regarding work on the Agreement. Information including, but not limited to, product packaging, advertisements,

articles, press releases, or other presentations, developed for release to the public must be submitted in their entirety to the IRS. The IRS and Participant will mutually approve the wording related to this Pilot on all such public releases. If agreement can not be reached between the Participant and the IRS, then the wording being reviewed shall not be used. The Participant is prohibited from releasing a press release solely for this pilot. The Participant is also prohibited from using references that currently have specific meaning in the postal industry such as "certified" or "registered" that could be misinterpreted by taxpayers. The Participant agrees to use language similar to the language provided by the IRS.

- b) In the event of a termination for the convenience of the IRS, the IRS shall issue a press release, jointly prepared with the Participant, declaring the termination of the pilot by the IRS. Such release shall be placed where determined by the Participant, except that the IRS reserves the right to either place such release itself in a reasonable number of news media or pay for the Participant's placement of such release. The IRS shall consider the Participant's reasonable request as to the number of news media to receive such release. The IRS shall also consider the Participant's reasonable request that it not issue a public release or public announcement of the termination of the Agreement for convenience of the IRS.

#### **10. LIABILITY:**

- a) [Insert name of Offeror company or organization] shall be responsible for the acts and omissions of its own employees.
- a) The IRS shall not be liable for any injury to the Participant's personnel or damage to the Participant's property unless such injury or damage is due to negligence on the part of the Government and is recoverable under the Federal Tort Claims Act (28 U.S.C. 1346(b)) or other applicable federal law.
- c) Non-Infringement. [Insert name of Offeror company or organization] warrants to the IRS that [Insert name of Offeror company or organization] has all right, title, and interest in the Software or appropriate third party intellectual property rights. As of the execution date of this Agreement, [Insert name of Offeror company or organization] represents that to the best of [Insert name of Offeror company or organization] knowledge; the use of the Software products as contemplated herein does not infringe upon or misappropriate the proprietary rights of any third party.

- d) Disclaimers. Except as expressly set forth in this Section 10, [Insert company or organization name] expressly disclaims all other warranties and conditions, express, implied, and statutory, including without limitation the implied warranties of title, merchantability, fitness for a particular purpose and non-infringement.
- e) Limitation of Liability. In no event shall [Insert name of Offeror company or organization] be liable, in connection with this Agreement, for any indirect, incidental, special, or consequential damages, including but not limited to loss of profits, data or use, whether in an action in contract, tort, or indemnity, even if [Insert name of Offeror company or organization] has been advised of the possibility of such damages.

## **11. THIRD PARTY RIGHTS:**

This Agreement does not alter, change or eliminate any rights or responsibilities that taxpayers have under the Internal Revenue Code, regulations or administrative provisions.

## **12. PERIOD OF PERFORMANCE AND TERMINATION:**

- a) This Agreement shall be in effect from [Insert date of execution of Agreement] through December 1, 2000. The parties shall have the option to extend this Agreement for the 2001 filing season for the 2000 tax year subject to a modification of the Agreement by mutual written consent of the parties. If the Agreement is so extended, the end date will be December 1, 2001.
- b) Except as otherwise stated herein, either party may terminate this Agreement prior to its expiration date stated in a) above by sending written notice to the other party. The written notice must be signed by the signatories to this Agreement or by their successors or designees. The effective date of such termination shall be 30 days after the non-terminating party's receipt of the written notice sent by the terminating party.
- c) The Participant may not terminate this agreement from January 1, 2000 to April 17, 2000 unless the Participant believes there has been a material breach by the IRS. In the event of an alleged material breach by the IRS, the Participant shall provide the IRS written notice of such breach. The IRS shall then have an opportunity to cure such breach within 30 days of receipt of such notice. In the event that the IRS fails to cure such breach within 30 days of its receipt of a notice of material breach, then the Participant shall have the right to immediately terminate this Agreement upon written notice to the IRS. All such written notices must be signed by the Participant's signatory to this Agreement or his or her successor or designee.

d) The Participant understands that in the event the IRS terminates this Agreement, the Participant has no right to any claim against the Government, including a claim for termination costs. Further, upon termination of this agreement, Participant agrees to:

1) provide notification of such termination within forty-eight (48) hours to those [Insert either taxpayers or EROs] using [Insert names of software] on Participants web site and via other commercially reasonable means.

2) within seven (7) business days, make available to those [Insert either taxpayers or EROs] using [Insert names of software] an update to their software that changes the electronic postmark language to indicate that a postmark is not provided for their IRS *e-file* returns.

### **13. MODIFICATION OF AGREEMENT:**

This Agreement may be modified by either party, but only upon mutual agreement. All modifications must be in writing and signed by authorized signatories to this Agreement or by their successors.

### **14. INSPECTION RIGHTS:**

The IRS may evaluate the Participant's performance of this Agreement and will provide the results of this evaluation to the Participant, in writing, on a quarterly basis for written comment and return to the IRS. The evaluation, including the Participant's comments, may be used by the IRS in considering the Participant for future Agreements or Contracts.

### **15. LIMITATIONS:**

The terms of this Agreement are not intended to alter, modify, or rescind any current Agreement or provision of Federal law now in effect. Any provision of this Agreement which conflicts with Federal law will be null and void.

### **16. SAVINGS CLAUSE:**

Each provision of this Agreement shall be given effect only to the extent to which it does not violate Federal law. The failure of any such provision for violation of Federal law shall not render invalid any other provision of this Agreement or the Agreement in whole. In the event this clause conflicts with any other clause in this Agreement, this clause shall govern.

**17. SIGNATURES:**

\_\_\_\_\_  
Internal Revenue Service

Date:\_\_\_\_\_

\_\_\_\_\_  
[Insert name of company or organization]  
[Insert name of POC]  
[Insert Title of POC]

Date:\_\_\_\_\_